(1) Supreme Court, U.S.
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No.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1995

TERESA LINEHAN, PATRICIA LINEHAN and JOHN G. LINEHAN,

Petitioners,

v.

CORNELIUS KEEFFE, FRANK GROSSMAN and EDWARD FOX,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A county court facility has no metal detector devices installed at any of its doorways. The Plaintiffs having, like everyone else, freely entered the courthouse, were thereupon singled out to be searched, with hand-held metal detectors, in the absence of any claim of probable cause or "individualized suspicion" that they were in possession of a weapon, with attorneys present in the courtroom at the same time being exempted from the search procedures. The Plaintiffs allege that they were singled out to be searched, because of personal animosity felt toward them.

1. Did the Second Circuit err in dismissing the Plaintiffs' complaint, on a pre-answer motion to dismiss, for failure to state a claim?
2. Did the Second Circuit err in holding that the doctrine of "consent" provides a basis for dismissal, as a matter of law, of this "search within a courthouse" case?

PARTIES

The name of all the parties to the proceeding in the court below appear in the caption of the case.

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PETITION FOR WRIT OF CERTIORARI

DECISIONS BELOW

The decision of the Second Circuit Court of Appeals was by way of Summary Order, not officially reported. (A 1-4). The District Court judgment, dismissing the complaint, is not officially reported. (A 5-6). The District Court did not issue a written opinion when it granted the motion to dismiss the complaint.

JURISDICTION

The United States Court of Appeals for the Second Circuit entered its judgment in this case on December 12, 1995. Thereafter, the plaintiffs moved for reargument, and the Petition for Reargument was denied on February 2, 1996. This Court has jurisdiction under 28 U.S.C. Sec. 1254 (1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

The first amendment to the United States Constitution provides as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.

The fourth amendment to the United States Constitution provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The first section of the fourteenth amendment to the United States Constitution provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a case about whether or not citizens have any fourth amendment rights when inside a courthouse. It necessarily involves basic fourth amendment principles, most importantly the doctrine of consent.

This is an action pursuant to 42 U.S.C. Sec. 1983 brought by the family of a murder victim against court officers who ordered and performed a search against them, to the exclusion of others, while they were seated in a courtroom waiting for proceedings to commence. The Second Amended Complaint (A 9-17) states three claims. The first alleges the unconstitutional seizure of the Plaintiffs, by virtue of the order that they leave their seats and exit the courtroom, issued by a court officer. The second alleges that the search procedures thereafter employed against the Plaintiffs were unconstitutional. The third claim alleges that the search procedure was unconstitutional by specific virtue of the fact that it was excessively conducted. After pre-trial disclosure, the third claim was dismissed on consent of the Plaintiffs, because it was established that the proper use of a hand-held metal detector necessarily requires repeated passes of the device within very close proximity to the human body. Prior to the consensual dismissal of the third claim, the District Court had dismissed, for failure to state a claim, the first two claims of the complaint.

On appeal to the Second Circuit, that court held that the seizure claim was properly dismissed, holding that, assuming the compliance by the Linehans with the order to leave the courtroom was a seizure, it was not unreasonable. With respect to the unconstitutional search claim, the Linehans argued that the procedures employed were unconstitutional for any one, or all, of three reasons. First, they were not part of a "uniform plan,

generally applied" because they were not directed by court administrators, toward all entrants, but rather were instigated at the claimed discretion of individual court officers only against them. Second, the use of a hand-held metal detector, rather than a walk-through magnetometer, is an improper procedure for a "first instance" search, because it is overly intrusive. In this respect, the dismissal of the third claim in the complaint supports the second claim, because the "proper" use of hand-held metal detector, especially as here when employed by male court officers against female citizens, requires repeated passes very close to the subject's body. And third, Plaintiffs allege that the search was pretextual in origin, in that rather than being designed to further legitimate security concerns, it was intended to harass, humiliate and annoy them. They allege that the motivation for such harassment originated with their criticisms leveled against the District Attorney's office in connection with the prosecution of the case, and a prior problem that John Linehan had three years earlier with the same court officer making the decision to search in this case (at that time, the court officer had attempted to force John Linehan to remain seated during the trial despite John Linehan's bad back).

The Second Circuit affirmed the dismissal of the unconstitutional search claim, on the basis of a legal doctrine of consent, further noting that the individual court officers could not be held responsible for the failure of their supervisors to have installed walk-through metal detectors.

Petitioners moved for a Reargument of the Second Circuit decision, but such petition was denied by an Order dated February 2, 1996 (A 7-8).

REASONS FOR GRANTING THE WRIT

This Court has never decided a case in the so-called courthouse entry search area of constitutional law. However, because the decision in this case from the Second Circuit squarely conflicts with the holding of the Ninth Circuit in *Klarfeld v. U.S.*, 944 F.2d 583 (9th Cir. 1991), an important federal constitutional law question is presented which should be settled by this Court.

The leading authority in the area of the constitutionality of courthouse entry searches has been *McMorris v. Alioto*, 567 F.2d 897 (9th Cir. 1978). That case upheld courthouse entry searches against the claim that they were inherently unconstitutional. The basis of that decision was the right to require a "qualified consent" to such searches, which were held to be reasonable because of the uniformity of their application and the lack of intrusiveness of their methodology when employed via a walk-through magnetometer. Petitioners do not challenge those basic principles.

In *Klarfeld*, supra, the Ninth Circuit built upon its prior decision in *McMorris v. Alioto*, by noting the permissibility of courthouse entry searches. But it upheld the complaint against a motion to dismiss because the procedure employed "may have been more intrusive" than the search procedures expressly authorized in *McMorris v. Alioto* and because "the intrusiveness of the search may have been unnecessary." If the doctrine of qualified consent meant that anyone wishing to enter a courthouse would be deemed to have consented to any search procedure sought to be employed against him or her, for any motivation, the Ninth Circuit would surely have affirmed the lower court dismissal of the *Klarfeld* complaint.

The Second Circuit in dismissing the Linehans' complaint relied upon the Ninth Circuit decision in *McMorris v. Alioto* for the proposition that there was a consent, as a matter of law, to the search procedures employed. In so doing, it neglected to consider the limitations on the rule of qualified consent, and in effect extended that doctrine so as to make it apply, as a matter of law, to bar any claim for a fourth amendment violation inside a courthouse. The Second Circuit was certainly aware of the issues raised by the Linehans' complaint because it had previously suggested that hand-held metal detectors could not be used in the first instance. *U.S. v. Albarado*, 495 F.2d 799 (2nd Cir. 1974); *Wilkinson v. Forst*, 832 F.2d 1330 (2nd Cir. 1987, see footnote 13 at page 1340). Prior to the incident complained of in this case, a trial court in the Second Circuit adopted the general rule that hand-held metal detectors should not be used in the first instance. *Wilkinson v. Forst*, 717 F.Supp. 49, 53 (D.Conn. 1989). Interestingly, in reaching their conclusion that the search was consensual as a matter of law, the Second Circuit cited this

Court's decision in *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), a case which held that consent is a factual issue. Furthermore, the Second Circuit also referred to this Court's decision in *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982), for the proposition that the right to be in a courtroom was not absolute. That is certainly a true statement, but it is respectfully urged that the more important principle applicable here is that this Court held there that the right to be in a courtroom is a matter of constitutional dimension.

In rejecting the Ninth Circuit approach, which requires a factual analysis of particular search procedures, in favor of a principle which allows a complete legal defense, the Second Circuit has created a very dangerous situation. In *Esmail v. Macrane*, 53 F.3d 176, 179 (7th Cir. 1995), the court held that "if the power of government is brought to bear on a harmless individual merely because a powerful state or local official harbors a malignant animosity toward him the individual ought to have a remedy in federal court." The principle of that decision was supported by the dissent in the petition for en banc review in *Klarfeld*, 962 F.2d 866 (9th Cir. 1992) which pointed out that the complaint alleged a purely subjective grievance and failed to allege the kind of personal animosity as is alleged in this case. That dissent also focused on the same limitation on discretion as is complained of here. Therefore, it seems clear that in the Ninth Circuit even the dissent would have upheld the petitioner's complaint. This decision from the Second Circuit, to the contrary, leaves citizens without a remedy when they allege that they have been victimized by arbitrary action undertaken beyond the scope of proper administrative duty by a governmental official acting out of personal malice.

It is one thing to uphold a practice whereby everyone wishing to enter a courthouse is subjected to a non-intrusive search procedure. It is quite another thing to hold that people singled out to be searched, alleging that they were singled out for reasons having to do with personal animus, and then searched with an intrusive hand-held metal detector will be deemed to have consented to that treatment, because they have the alternative of waiving their constitutional right to witness public legal proceedings. Such a principle of law is repugnant to the principles

enunciated by this Court in *Bumper v. North Carolina*, 391 U.S. 543 (1968) and *Terry v. Ohio*, 392 U.S. 1 (1968). A better distinction, as in the border search area of law, is that although fourth amendment rights do not exist at the borders (*U.S. v. Ramsey*, 431 U.S. 606 (1977)), the acts of border patrols inside the borders are subject to constitutional scrutiny. *Almeida-Sanchez v. U.S.*, 413 U.S. 266 (1973) and *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975).

The rights the Petitioners seek are consistent with recent federal legislation declaring the rights of crime victims. 42 U.S.C. Sec. 10606. The complaint makes reference to parallel regulations which were in effect in the State of New York at the time of the incident complained of here. Although these regulations certainly do not dictate constitutional principles, they do give context to the significance of the Second Circuit's ruling. To have not only a constitutional right to attend public legal proceedings, but regulations which support and encourage victim participation in the legal process, on the one hand, and to rule that people are deemed to consent to whatever arbitrary treatment is applied against them, on the other hand, is to sanction a terrible policy. Hopefully, this Court will perceive that the paucity of appellate authority in this area of the law is due to a clear understanding that the fourth amendment continues to have viability inside a courthouse, and by analogy, anywhere else that the "administrative search" exception rules might apply. *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967). This departure by the Second Circuit should, not solely for the benefit of the Petitioners, but as a matter of jurisprudence, be corrected and clarified.

CONCLUSION

The Second Circuit decision, conflicting as it does, with compelling precedent from the Ninth Circuit, and an analogous case from the Seventh Circuit, should not be allowed to stand. This case is not about the lawfulness of various administrative procedures, but rather about the arbitrary acts of individuals cloaked with governmental authority. The consent defense was never intended to provide a blanket immunization of individual behavior, and the opportunity this case presents for clarifying this

point so that other and similar rulings do not occur should not be by-passed.

For the foregoing reasons, this Court should grant the Petition for a Writ of Certiorari, or in the alternative, a summary reversal pursuant to Rule 16.1.

Respectfully submitted,

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Dated: April 30, 1996

APPENDICES

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City and County of New York, on the 12th day of December, one thousand nine hundred and ninety-five.

Present: HONORABLE JOSEPH M. McLAUGHLIN
HONORABLE PIERRE N. LEVAL
Circuit Judges
HONORABLE BARRINGTON D. PARKER
District Judge*

TERESA LINEHAN, PATRICIA LINEHAN, and JOHN G. LINEHAN,

Plaintiffs - Appellants,

v.

No. 95-7374

CORNELIUS KEEFE, FRANK GROSSMAN, and EDWARD FOX,

Defendants-Appellees

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* Of the United States District Court for the Southern District of New York, sitting by designation.

For plaintiffs-appellants: Leo P. Davis, East Moriches, NY.

For defendants-appellees: Patricia M. Hingerton, Att'y Gen.'s Office, Hauppauge, NY.

Appeal from the United States District Court for the Eastern District of New York (Wexler, J.).

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York and was argued by counsel.

ON CONSIDERATION WHEREOF, it is hereby ordered, adjudged, and decreed that the judgment of the district court be and it hereby is AFFIRMED.

John Linehan, his wife Teresa, and his daughter Patricia appeal from a March 10, 1995 judgment of the United States District Court for the Eastern District of New York (Leonard D. Wexler, Judge) dismissing their civil rights suit, brought under 42 U.S.C. Sec. 1983, against three court officers. The suit stemmed from events following the shooting of two other members of the Linehan family. One of the victims – a son – died, while the other – another son – survived. George Kuey was convicted and sentenced in connection with the shootings. His sentence, however, was overturned on appeal. The father and mother, their daughter Patricia, and their sons Daniel and Terrance (the surviving victim) came to the courtroom to attend the resentencing.

When the Linehans learned that Kuey would receive a shorter sentence than the original one, a heated exchange broke out between the father and Daniel, on one side, and the assistant district attorney, on the other. Some time later, Defendant Cornelius Keefe, then the Chief Court Officer for the area encompassing the courtroom, decided that the Linehans should all be screened for weapons. Two subordinates, defendants Frank Grossman and Edward Fox, carried out his instructions. They ordered the Linehans to leave the courtroom, and refused the Linehans the right to re-enter unless they

consented to searches using hand-held metal detectors. During those searches, a verbal altercation escalated into a brawl.

The Linehans (save Terrance) were arrested and charged with various crimes. The grand jury dismissed assault charges against the father and daughter, but indicted them on charges of obstructing governmental administration. Those charges went to trial; the trial court dismissed the charge against the daughter, and the jury acquitted the father. Linehan v. New York, No. 80341A (N.Y. Ct. Cl. Nov. 14, 1991), aff'd 201 A.D.2d 706 (2d Dep't 1994). The charges against the mother and son, on the other hand, were dropped after the grand jury voted not to indict.

Thereafter, the father, mother, and daughter brought a Sec. 1983 suit against Keefe, Grossman, and Fox, seeking compensatory and punitive damages. Their complaint, as amended, alleged three unlawful search and seizure claims under the Fourth Amendment. The defendants moved to dismiss the amended complaint for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), and failure to state a claim upon which relief could be granted, Fed. R. Civ. P. 12(b)(6). Judge Wexler granted the motion in part, dismissing two of the three claims. The Linehans filed a second amended complaint, restating the first two claims and adding additional factual allegations to the third. The defendants moved to dismiss again. After allowing the Linehans limited discovery, Judge Wexler ruled that the amended complaints had failed to state a claim upon which relief could be granted, and dismissed the suit.

On appeal, the Linehans argue that they have stated at least two cognizable Fourth Amendment claims: (1) the defendants' order removing them from the courtroom was by itself an unconstitutional "seizure"; and (2) the defendants' use of hand-held metal detectors to conduct the searches was inherently offensive. Construing their pleadings in the light most favorable to them, we cannot agree.

1. Assuming that the Linehans' compliance with the order to leave the courtroom was a Fourth Amendment seizure, see California v. Hodari D., 499 U.S. 621, 626 (1991), nevertheless this seizure was not unreasonable. The pleadings concede that the Linehans were

upset that Kuey would receive a lighter sentence. Their disruptive outburst justified the order that they leave the courtroom. Cf. United States ex rel. Orlando v. Fay, 350 F.2d 967, 971 (2d Cir. 1965), cert. denied sub nom. Orlando v. Follette, 384 U.S. 1008 (1966).

2. The ensuing search using hand-held metal detectors was by consent, and did not run afoul of the Fourth Amendment. See generally Schneckloth v. Bustamonte, 412 U.S. 218 (1973). There is no allegation that the Linehans could not leave the courthouse until they submitted to the search. That they could not re-enter the courtroom makes the search no less consensual. See, e.g., McMorris v. Alioto, 567 F.2d 897, 900-01 (9th Cir. 1978). They were not compelled to be in the courtroom, and their right to be there was not absolute, see Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 606 (1982).

The core of the Linehans' complaint is that the use of a walk-through metal detector at the courthouse entrance to conduct the search would have been less intrusive. Of course it would. But, it is undisputed that the courthouse lacked such a device. Furthermore, there is no suggestion that these defendants, court officers, were in any way responsible for its absence.

Accordingly, the judgment of the district court is AFFIRMED.

HON. JOSEPH M McLAUGHLIN,
HON. PIERRE N. LEVAL,
Circuit Judges

HON. BARRINGTON D. PARKER,
District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

TERESA LINEHAN, PATRICIA LINEHAN and JOHN G. LINEHAN,

Plaintiffs,

-against-

JUDGMENT

CV-93-0037 (LDW)

CORNELIUS KEEFE, FRANK GROSSMAN and EDWARD FOX (f/k/a EDWARD FUCHS),

Defendants.

----------x

A Memorandum and Order of Hon. Leonard D. Wexler, United States District Judge, having been filed on March 6, 1995, denying Plaintiff's motion for reargument of this Court's Order entered September 2, 1993 which dismissed their second claim in the First Amended Complaint, as untimely under Local Civil Rule 3(j), and directing the Clerk of the Court to enter judgment in favor of defendants and against plaintiffs as to the first and second claims in the First Amended Complaint and as to the third claim in the Second Amended Complaint, pursuant to the Court's order filed November 18, 1994 dismissing this claim, and to close the file in this case, it is

ORDERED and ADJUDGED that the plaintiffs, TERESA LINEHAN, PATRICIA LINEHAN and JOHN G. LINEHAN, take nothing of the defendants, CORNELIUS KEEFFE, FRANK

GROSSMAN and EDWARD FOX (f/k/a EDWARD FUCHS); and that this action is dismissed in its entirety.

Dated: Hauppauge, New York
ROBERT C. HEINEMANN
March 10, 1995
Clerk of the Court

By: JOSEPH DI TALIA
Deputy Clerk-in-Charge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 Foley Square
New York 10007

GEORGE LANGE III
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 2nd day of February one thousand nine hundred and ninety-six.

Present:

Hon. Joseph McLaughlin
Hon. Pierre Leval
Hon. Barrington Parker

95-7374

Teresa Linehan, Patricia
Linehan and John G. Linehan,

Plaintiffs-Appellants,

v.

Cornelius Keeffe, Frank Grossman
and Edward Fox,

Defendants-Appellees.

A petition for rehearing having been filed herein by Appellants Teresa Linehan, Patricia Linehan and John G. Linehan.

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

GEORGE LANGE III, Clerk

By: Beth J. Meador,
Administrative Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

THERESA LINEHAN, PATRICIA LINEHAN and JOHN G. LINEHAN,

Docket No. CV-93-0037

Plaintiffs,

SECOND AMENDED COMPLAINT

-against-

Jury Trial Demanded

Wexler, J.

CORNELIUS KEEFFE, FRANK GROSSMAN and EDWARD FOX (f/k/a/ EDWARD FUCHS),

Defendants.

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Plaintiffs, by their attorney, LEO P. DAVIS, P.C., complaining of the Defendants, set forth and allege as follows:

NATURE OF ACTION AND JURISDICTION

1. This is a civil rights action brought by Plaintiffs pursuant to 42 USC 1983, seeking compensatory and punitive damages resulting from an unlawful seizure and search of the Plaintiffs by the Defendants, and counsel fees pursuant to 42 USC 1988. The Defendants were, at the time of the acts complained of herein, Court Officers employed by the New York State Office of Court Administration, who were acting under color of State law when they violated rights guaranteed to the Plaintiffs by the First, Fourth and Fourteenth Amendments of the United States Constitution.

STATEMENT OF THE CLAIM

INTRODUCTION

7. In June of 1986, TERRANCE LINEHAN and his brother, JOHN LINEHAN, the sons of Plaintiffs JOHN G. LINEHAN and TERESA LINEHAN and the brothers of Plaintiff PATRICIA LINEHAN, were the victims of gunshot inflicted wounds, in Eastport, New York. JOHN LINEHAN died as a result of the injuries sustained.

8. After the incident, one BRIAN CAHILL was arrested and charged with the crimes pertaining to the incident. His accomplice, GEORGE KUEY, was not charged. Thereafter, Plaintiff JOHN G. LINEHAN undertook a campaign to "force" the District Attorney of Suffolk County to also prosecute GEORGE KUEY, and ultimately prevailed in that effort.

9. In or about April of 1987, the perpetrators of the crime, BRIAN CAHILL and GEORGE KUEY, went to trial, in the County Court of Suffolk County, and were each convicted of felonies.

10. During the course of the aforesaid trial, the Plaintiffs attended all of the proceedings, along with DANIEL LINEHAN, another son of Plaintiffs JOHN G. LINEHAN and TERESA LINEHAN and a brother of Plaintiff PATRICIA LINEHAN.

11. During the course of the trial, Plaintiff JOHN G. LINEHAN was involved in a disagreement with Defendant CORNELIUS KEEFFE, concerning the fact that JOHN G. LINEHAN had and has a bad back, which necessitated that he stand during prolonged Court sessions. DANIEL LINEHAN engaged in an act of verbal outburst during the trial, the existence of which was known to Defendant CORNELIUS KEEFFE.

12. After the trial was concluded and the perpetrators were sentenced, Plaintiff JOHN G. LINEHAN became an active participant in the fledgling "victims rights movement", in the State of New York, and ultimately became the President of the Long Island chapter of Parents of Murdered Ch[illegible]n. In the course of such activities, and otherwise, Plaintiff JOHN G. LINEHAN publicly criticized the Suffolk County District Attorney's Office and Police Department, concerning the investigation and prosecution of the case involving his sons.

13. In or about November, 1989, the appeal of GEORGE KUEY was determined, and it was ruled that his case should be returned to the Suffolk County Court, for re-sentencing. The Suffolk County District Attorney neglected to inform the Plaintiffs of this development, and they initially learned of it only through a communication from their attorney.

14. Upon receipt of such notice, Plaintiff JOHN G. LINEHAN contacted the Suffolk County District Attorney, advised the office that he knew about the new proceedings, and requested information. He was told, in effect, that he would be advised of the new Court date, and that it was a formality, which would not substantively affect the sentence imposed upon the perpetrator.

15. On January 8, 1990, the Plaintiffs, together with DANIEL LINEHAN, entered the H. Lee Dennison Building, in Hauppauge, New York, without being subjected to any metal detector search, to attend the re-sentencing hearing of GEORGE KUEY.

16. Such appearance by the Plaintiffs was as the family of a crime victim. At the time of such appearance, Part 129 of the New York Code of Rules and Regulations (Judiciary) provided for the "fair treatment standards for crime victims."

17. Notwithstanding the terms and provisions of the aforesaid regulations, the Defendants did not afford any of the specific

rights provided for by such regulations to the Plaintiffs, and specifically, the Plaintiffs were not afforded a "secure waiting area separate from all other witnesses."

18. To the contrary, on January 8, 1990, the Plaintiffs entered Courtroom 205, the designated Courtroom, at or about 9:10 a.m., and at least one of the Plaintiffs waited and remained continuously in or near the Courtroom for the next two hours, at all times. At all times, the Plaintiffs passed freely in and out of the Courtroom.

19. On the morning of January 8, 1990, Plaintiffs JOHN G. LINEHAN and DANIEL LINEHAN engaged in a conversation with Assistant District Attorney Michael Ahearn, which became heated, wherein they were advised, for the first time, that previous assurances notwithstanding, the sentence to be imposed upon GEORGE KUEY was going to be reduced at the proceeding to be conducted that morning.

FIRST CLAIM: UNLAWFUL SEIZURE

20. At or about 11:00 a.m. on January 8, 1990, the Plaintiffs were seated in the spectator section of Courtroom 205. At or about 11:10 a.m. on January 8, 1990, CORNELIUS KEEFFE, as the Chief Court Officer assigned to the area wherein Courtroom 205 was situate, made the decision, and thereby instructed his subordinates, to conduct a hand held metal detector search of the Plaintiffs.

21. In response to the directive of the said CORNELIUS KEEFFE, FRANK GROSSMAN and EDWARD FOX ordered the Plaintiffs to leave the Courtroom. Other persons in the Courtroom were excluded from this order, which thus constituted an unauthorized "seizure" of the person of the Plaintiffs, as well as an unreasonable deprivation of their liberty interests, in violation of their rights under the Fourth and Fourteenth Amendments.

22. Plaintiffs acquiesced to the authority of the Defendants, and exited the Courtroom.

SECOND CLAIM: UNREASONABLE SEARCH

23. The subsequent search conducted against Plaintiffs TERESA LINEHAN and PATRICIA LINEHAN was unreasonable and hence unconstitutional, and was violative of their Fourth Amendment rights, for the reason that the decision to search the Plaintiffs was not pursuant to a generally applied plan, was not timely, was not uniformly applied to all entrants into the Courtroom, or Courthouse, was not a random search, cannot be justified by any articulable "reasonable belief" that the Plaintiffs, or any one of them, was in possession of a weapon, and was not performed in the least intrusive manner possible.

24. Upon information and belief, the basis for the decision to conduct the search of the Plaintiffs was a desire to humiliate, harass and annoy the Plaintiffs, engendered by an animosity directed at Plaintiffs JOHN G. LINEHAN and DANIEL LINEHAN by Defendant CORNELIUS KEEFFE as a result of incidents at the 1987 trial, encouraged and promoted by the animosity of the prosecuting Assistant District Attorney, Michael Ahearn, in retaliation for the prior criticism directed toward him and the Suffolk County District Attorney by Plaintiff JOHN G. LINEHAN, and aggravated by the heated discussion that morning, as above-mentioned, and the animosity expressed toward Plaintiff JOHN G. LINEHAN, to the Defendants, by the perpetrator's attorney, David Clayton, Esq. The said Michael Ahearn and David Clayton were conversing in the area of the Court officers just prior to the commencement of the search procedures, and they were exempted from the search procedures.

25. Upon information and belief, the Defendants purported to exercise the search pursuant to an obligation to carry out the directive of the Chief Administrative Judge of Suffolk County,

then Hon. Arthur M. Cromarty, pursuant to a written memorandum.

26. Notwithstanding the aforesaid, the search conducted against the Plaintiffs was in direct violation of policies contained in that memorandum, to the extent that attorneys present in the Courtroom were excluded, improperly, from the search, and the searches were not performed at the entrance to the Courthouse via a walk-through metal detector.

27. At the time of the incidents complained of, the basic legal principles upon which these claims are based were clearly established, such that the Defendants knew or should have known that their conduct, as complained of herein, was violative of the Plaintiffs' constitutional rights.

THIRD CLAIM: EXCESSIVE SEARCH

28. Plaintiffs TERESA LINEHAN and PATRICIA LINEHAN further complain of Defendants GROSSMAN and FOX, in that the manner in which the search was conducted was unreasonable and sexually offensive, and was intended to, and did, humiliate and embarrass the aforesaid Plaintiffs. The searches of Plaintiff TERESA LINEHAN was unduly protracted and the searches of Plaintiffs TERESA LINEHAN and PATRICIA LINEHAN focused unnecessarily upon intimate parts of the Plaintiffs' bodies. The nature of the search procedure was beyond the scope of what was necessary to conduct a reasonable search for weapons.

29. The search of Plaintiff TERESA LINEHAN was conducted by Defendant GROSSMAN who, notwithstanding the presence of a female officer, passed the hand held metal detector very near the Plaintiff's body, coming virtually within an inch of touching Plaintiff TERESA LINEHAN upon her breasts and genital area. Such procedure was performed, in such a manner, approximately four times, reducing the Plaintiff to tears.

30. At the conclusion of such procedure, as Plaintiff TERESA LINEHAN was about to be permitted re-entry into the Courtroom, Defendants GROSSMAN and FUCHS stopped the Plaintiff and exchanged conversation with each other to the effect of: "Let's make her take her boots off and see if she's got anything in there."

31. With respect to Plaintiff PATRICIA LINEHAN, Defendant GROSSMAN instructed the Plaintiff to put her arms out to her sides at shoulder length, and while standing six inches away from her face and staring at her, passed the hand held metal detector within an inch of the upper portion of the Plaintiff's body, starting at one hand, across her breasts, and to her other hand.

32. That upon information and belief, the standards for the proper use of hand held metal detectors do not require that such instrument be held so close to the body of the person to be searched, nor do the standards require "multiple" passes unless the device is "triggered." In the case of Plaintiff TERESA LINEHAN, the device was not triggered. In the case of Plaintiff PATRICIA LINEHAN, a verbal altercation which subsequently became a melee occurred prior to Defendant GROSSMAN having the opportunity to continue the procedure.

33. In all respects, the Defendants conducted themselves with a gross disregard of the Plaintiffs' rights under the Fourth and Fourteenth Amendments, and with a callous and reckless disregard of whether or not they were violating such rights.

RELIEF SOUGHT

As against Defendants, individually, jointly and severally, on Plaintiffs' claims pursuant to USC Section 1983:

1. Compensatory damages in an amount to be determined as the fair and just compensation for the improper seizure of the Plaintiffs, as set forth in the first claim.

2. Compensatory damages in an amount to be determined as the fair and just compensation for the unconstitutional search of Plaintiffs TERESA LINEHAN and PATRICIA LINEHAN, as set forth in the second claim.

3. Compensatory damages in the sum of $1,000,000.00 as the fair and just compensation for the overly intrusive search of Plaintiffs TERESA LINEHAN and PATRICIA LINEHAN as set forth in the third claim.

4. Punitive damages in an amount to be determined as the fair and just penalty against the Defendants.

5. The reasonable counsel fees of the Plaintiffs for prosecuting this action, and costs as otherwise provided by law.

6. Granting such other and further relief as to the Court may seem just, proper and equitable.

Dated: East Moriches, New York
September 24, 1993

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